

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

J. IRVIN BEATLEY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:18-cv-37-MHL
)	
CHARLES E. AYERS, JR.,)	
RALPH L. COSTEN, JR., and)	
JESSE L. BARBER,)	
)	
Defendants.)	

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL JUDGMENT ON COUNT I**

The Defendants, Charles E. Ayers, Jr., Ralph L. Costen, Jr., and Jesse L. Barber (collectively, "Defendants"), by and through undersigned counsel, hereby submits their Opposition to Plaintiff's Motion for Partial Judgment on Count I for \$134,000.

ARGUMENT

Plaintiff, J. Irvin Beatley ("Plaintiff") moved for, as he describes it, "partial" judgment on Count I pursuant to Fed. R. Civ. P. 12(c). However, no authority exists for Plaintiff to move for anything less than an entire judgment as to Count I.

Fed. R. Civ. P. 12(c) permits a party to move for *judgment* on the pleadings after the pleadings are closed, but early enough not to delay trial. While Fed. R. Civ. P. 12(c) does not prohibit a party from moving for partial judgment on the pleadings; such an action is not expressly permitted by the rule. In contrast, Fed. R. Civ. P. 56(a) expressly permits a party to move for summary judgment on any one claim, or the part of any one claim.

While some courts have permitted partial judgments on entire counts within a pleading, Plaintiff is not seeking judgment on the entirety of Count I. *See Hall v. Autozoners, LLC*, 2001 WL 2414534 (E.D. Va. 2011). Plaintiff's motion under 12(c) asks the Court to parse Count I of Plaintiff's Complaint and award to him \$134,000. Plaintiff would then, supposedly, return for another bite of the apple and ask for additional amounts under Count I, to be determined later.

Plaintiff's effort at a motion for judgment on anything less than an entire count should not be permitted by this Court. Were Plaintiff's unique motion before other courts in the country, it would be dismissed as inappropriate. *See Bolender v. Carnival Corporation*, 2014 WL 12527190, *1 (S.D. Fla. April 7, 2014); *see also In re Amica, Inc.*, 130 B.R. 792, 796 (N.D. Ill. 1991) (noting that "[p]artial judgment on the pleadings is not possible in federal pleading unless it disposes entirely of one or more counts of the complaint.")

CONCLUSION

For the foregoing reasons, the Court should overrule the Plaintiff's Motion for Partial Judgment on Count I.

Dated: March 9, 2018

CHARLES E. AYERS, JR.,
RALPH L. COSTEN, JR., and
JESSE L. BARBER

By: /s/ Stephen M. Faraci, Sr.
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Counsel for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2018, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

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